

REMARKS

Reconsideration of the application in view of the above amendments and the following remarks is requested.

In accordance with 37 CFR 1.121, the claims which are being currently amended are presented with markings to indicate the changes that have been made relative to the immediate prior version.

Claims 12 and 13 have been amended to better define the invention, as discussed below. Claim 14 has been cancelled.

Claim Rejection - 35 U.S.C. §112, second paragraph

The Examiner indicated that claim 12 was indefinite. In particular, the Examiner indicated that "stating that the flicker element is positioned between the light source and the screen is misdescriptive".

The wording in claim 12 referring to the flicker element has been amended accordingly, i.e., the flicker element is now described as being -- positioned in a path of light from the light source --.

Also, claim 12 has been amended by including therein subject matter from claim 14, to provide what is believed to be a clear description of the invention.

The Applicant submits that the enclosed amended claim 12 is not misdescriptive. It is believed that this rejection is obviated and should be withdrawn.

Claim Rejections - 35 U.S.C. §102(b)

Claims 12 - 14 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3 395,476 (Moss et al.).

The Examiner's comments were, in part, as follows:

Moss et al. shows in figures 1-4 a flame simulating assembly comprising a simulated fuel bed (3), a light source (4), a screen (9) positioned behind the simulated fuel bed for transmitting and diffusing light, the screen including a plurality of curved portions (13), each of the curved portions adapted to attenuate the image of flames upon transmission through the screen to give at least a portion of the flames a three-dimensional appearance . . . The arrangement of the curved portions (13) are considered to be random since Moss et al. shows that they are different sizes and shapes. Therefore, as broadly defined, the curved portions (13) are considered to be "random". In regard to claim 13, the curved portions (13) of Moss et al. are considered to be spaced apart from each other a randomly selected distance.

Although the curved portions (13) in Moss et al. appear to be curved in a horizontal direction, they do not appear to be curved in a vertical direction. Moss et al. appears to disclose a screen (9) with curved portions (13) which are consistently configured, from top to bottom, at least as far as can be determined from Fig. 2 of Moss et al.

In contrast, in the Applicant's invention, the curved portions are curved both in a vertical direction and in a horizontal direction, to provide a more realistic effect. Support for these amendments can be found, for example, in paragraph 00120, and in Fig. 35. In paragraph 00120, the back surface (1167) is said to be:

curved in a vertical direction and in a horizontal direction in a manner selected so as to further simulate the random fluctuations of real flames.

Paragraph 00120 also refers to curved portions (1149) which, as can be seen in Fig. 35, are formed by the curves in the back surface (1167) described above. Because of the unitary construction of the sheet (1142) (as shown in Fig. 35), and in view of Figs. 33 and 34, it is clear that the curved portions are curved in a vertical and in a horizontal direction.

Claim 13 has been amended to make it clear that the curved portions are randomly spaced apart. Support for this amendment can be found in paragraph 00120.

Given that Moss et al. fails to teach or suggest each and every element of the claimed invention, Moss et al. is insufficient to reject amended claim 12 or its associated dependent claim 13 under 35 U.S.C. §102(b). Thus, it is respectfully requested that this rejection be withdrawn.

Claim 14 has been cancelled. Accordingly, the Applicant submits that the rejection of this claim is moot.

Claim Rejections - 35 U.S.C. §102(e)

Claims 12 – 14 were rejected under 35 U.S.C. §102(e) on the ground that they were anticipated by U.S. Patent No. 6,944,982 (Schroeter et al.).

The Applicant submits that Schroeter et al. is not properly citeable against the application herein. The application herein is a continuation-in-part of U.S. patent application no. 10/101,013, filed on March 20, 2002 (now U.S. Patent No. 6,718,665). The priority date of the Schroeter et al. patent is September 27, 2002. The invention to which the enclosed revised claims 12 – 13 are directed is shown in Figs. 12 – 14 in the '665 patent and described in columns 7 – 8 thereof. (The Applicant acknowledges, however, that the description of the invention in

columns 7 and 8 of the '665 patent differs somewhat from the description thereof in paragraphs 00120 – 00122 of the application herein.) In view of this, the Applicant submits that Schroeter et al. is disqualified as prior art under 35 U.S.C. §102(e). Accordingly, it is respectfully requested that this rejection be withdrawn.

In the alternative, however, the Applicant also submits that the invention herein (as defined in revised claims 12 and 13) is not anticipated by Schroeter et al. in any event.

In Schroeter et al., Fig. 10 discloses a diffusing panel (12) with a panel (27) positioned in front of the diffusing panel (12). The panel (27) is described as follows (col. 6, lines 22-34):

... fire simulation screen 13 is comprised of a solid and rigid panel 27 that has a varying thickness and has areas of varying relief upon its front surface. . . panel 27 also contains the image of a fire on its surface. The varying thickness and relief helps to generate a more realistic look and provides a 3-dimensional appearance to the fire. It is expected that in most instances panel 27 would be moulded from a plastic or synthetic material . . . with at least a portion of it being at least partially translucent to permit light passing through diffusing panel 12 to be viewed from in front of simulating screen 13, creating the appearance of flames moving upwardly from the image of the fire on the screen.

An additional description is provided in Schroeter et al. at col. 7, lines 28-39:

In the particular embodiment of the invention that is shown in FIG. 14, panel 27 is formed using a generally flat sheet of polystyrene having a thickness of approximately 0.025 inches. The image of a burning fire . . . is printed, silk screened or otherwise applied to the generally flat panel. Thereafter the panel is subjected to a vacuum molding process to produce a 3-dimensional effect with areas of varying relief across the surface of the panel. These areas of varying relief, in combination with the

image of a burning fire on the panel, provide a realistic and 3-dimensional image of an actual fire when viewed from in front of the panel.

In contrast, in the Applicant's invention, the screen (1142) has a substantially consistent thickness, as shown in Fig. 35. As described in paragraph 00120 of the application herein (and as shown in Figs. 33-35), the screen (1142) includes a plurality of curved portions (1149). The back surface 1167 is described as preferably being curved in a vertical direction and a horizontal direction to define the curved portions, and because the screen has a unitary construction (and the front surface and the back surface are shown as being substantially parallel to each other in Fig. 35, so that the screen has a substantially consistent thickness throughout), the curved portions have substantially consistent thickness. Claim 12 has been amended to include the limitation that the screen has a substantially consistent thickness throughout.

As compared to the structure of the screen in Schroeter et al., the Applicant's screen has the advantage that it is of simpler construction (i.e., one piece instead of two), and therefore would cost relatively less to manufacture.

In view of the foregoing comments, the Applicant submits that Schroeter et al. fails to teach or suggest each and every element of the claimed invention. Accordingly, it is respectfully requested that this rejection be withdrawn.

Claim Rejections - 35 U.S.C. §103(a)

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Moss et al. in view of U.S. Patent No. 6,393,207 (Martin et al.).

As indicated above, claim 14 was cancelled. The Applicant submits that this rejection is now moot.

The Commissioner is authorized to charge the applicable fees to the Applicant's agent's account, being deposit account no. 501613.

On the basis of the foregoing revised claims and the foregoing remarks, the Applicant respectfully asserts that the rejections of the claims as set forth in the office action of February 6, 2006 have been addressed and overcome (or are now moot). The Applicant further asserts that the claims are now in condition for allowance and requests that a Notice of Allowance be issued. The Applicant's agent invites the Examiner to contact the Applicant's agent via telephone if the Examiner considers that a telephone conference would be of assistance in this matter.

Respectfully submitted,  
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